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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/993,048	11/13/2001	Lynn P. Nelles	AFB-SNF-1	8133

7590 11/30/2004  
Patrick D. Kelly  
11939 Manchester #403  
St. Louis, MO 63131

EXAMINER

WONG, LESLIE A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 11/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/993,048

Applicant(s)

NELLES ET AL.

Examiner

Leslie Wong

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-10 and 24-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-10 and 24-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 7 is rejected under 35 U.S.C. 102(b) as being anticipated by Chen et al (US Patent No. 5,079,017) for the reason set forth in rejecting the claim in the last Office action. The amendments to the claim are not seen to influence the conclusion of unpatentability previously set forth.

Chen et al teach a flavorant obtained by heating an oil/fat and a sulfur-containing compound (see entire patent, especially claims 1 and 14).

Applicant's arguments filed September 8, 2004 have been fully considered but they are not persuasive.

Applicant argues that the claimed invention is directed to use in animal food.

Chen et al teach a flavorant obtained by heating and oil/fat and a sulfur-containing compound as is claimed. The flavorant of Chen et al does not exclude application to animal foods. Certainly, flavors, especially meat flavors, are used in animal foods. The intended use of a composition is not accorded any patentable weight as the composition is able to stand alone.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10 and 24-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen et al (US Patent No. 5,079,017) in view of Boudreau et al (US Patent No. 4,267,195) and Paluch (US Patent No. 6,312,746).

Chen et al disclose a flavorant obtained by heating an oil/fat and a sulfur-containing compound, such as cysteine (see entire patent, especially claims 1 and 14).

The claims differ as to the presence of a second palatability enhancer and the specific use of the product in an animal food.

Boudreau et al disclose it is well known that cysteine (nitrogen and sulfur containing) serves to increase palatability for dogs (see entire document, especially the abstract).

Paluch discloses conventional pet food components including hydrolyzed meat protein (see entire patent, especially Table 2).

It would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use the flavorant of Chen et al in an animal food product because the use of nitrogen/sulfur containing compounds in pet foods is conventional in the art.

Applicant's arguments filed September 8, 2004 have been fully considered but they are not persuasive.

Applicant argues that the claimed invention is directed to use in animal food and that there is no motivation to combine the references.

Chen et al teach a flavorant obtained by heating and oil/fat and a sulfur-containing compound as is claimed. The flavorant of Chen et al does not exclude application to animal foods. Certainly, flavors, especially meat flavors, are used in animal foods.

Boudreau et al is cited to teach that it is well known that cysteine (nitrogen and sulfur containing) serves to increase palatability for dogs (see entire document, especially the abstract). Paluch is cited to teach conventional pet food components including hydrolyzed meat protein (see entire patent, especially Table 2).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the art is all directed to foods (not excluding animal foods) containing conventional flavorants.

Applicant is using known components to obtain expected results. All of the claimed components are well-known in the art and are used for their art-recognized function. Applicant's claims are directed to product claims and as such do not exclude process limitations of the prior art.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

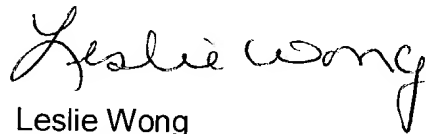
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leslie Wong whose telephone number is 571-272-1411. The examiner can normally be reached on Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Leslie Wong  
Primary Examiner  
Art Unit 1761

LAW  
November 24, 2004